



# City of Nashua

Public Works Division  
165 Ledge Street - Nashua, NH 03060  
*#1 City in America*

---

## MEMO

July 25, 2002

To: Mayor Streeter, Finance Committee  
From: Stephen Dookran, P.E., Engineering Department  
**Pennichuck Corp. Study – Contract Approval**

---

Attached is a copy of the proposed agreement between the City and Rizzo Associates for professional services in the review of Pennichuck Corporation Water System. We are seeking the Finance Committee's approval on this agreement. The agreement also goes before the Board of Public Works on 08/06/02.

Four firms sent in proposals for the project. After interviewing all four firms, Rizzo was determined by the selection committee to be the one best prepared to offer the services expected. George Sansoucy, P.E. was recommended as a sub-consultant because of its knowledge and expertise on Public Utilities Commission proceedings and negotiations. The selection was based on criteria outlined in NRO Sec.2-248.

This agreement was reviewed by the Engineering, Legal, Risk Management and Purchasing Departments and all changes incorporated.

The final contract price agreed between the City and Rizzo is \$99,600.00. This is to be funded from Account # 590-23512-7500: Prior Year Escrow – Financial Services, Pennichuck Study.

cc: George Crombie, Jim Mealy, Eric Teitelman, Cindy Bielawski, Janice Tremblay

Division Director 589-3140	Street Department 589-4150	City Engineer 589-3120	Parks-Recreation Department 589-3360	Solid Waste Department 589-3410	Traffic Department 589-4700	Wastewater Treatment Plant 589-5360
----------------------------------	----------------------------------	------------------------------	--	---------------------------------------	-----------------------------------	---

# **AGREEMENT FOR PROFESSIONAL SERVICES**

## **Comprehensive Review Pennichuck Corporation Water System Nashua, New Hampshire**

This Agreement, entered into this \_\_\_\_ day of \_\_\_\_\_ 2002, is between the City of Nashua whose address is City Hall, 229 Main Street, Nashua, New Hampshire, 03060, hereinafter called the "CITY," and Rizzo Associates, Inc. whose usual place of business is One Grant Street, Framingham, MA 01701, hereinafter called the "ENGINEER."

**WHEREAS**, the CITY desires the services of a Professional Engineering firm for the Comprehensive Review of the Pennichuck Corporation Water System in the City of Nashua and

**WHEREAS**, the ENGINEER is duly qualified to perform the professional services required for this project.

**NOW THEREFORE**, in consideration of the mutual Agreements contained herein, the CITY and the ENGINEER agree to the following:

### **1. CONTRACT DOCUMENTS**

The Contract Documents consist of the following, and in the event of conflicts or discrepancies among them, they shall be interpreted on the basis of the following priorities:

- 1 This Agreement for Services between the CITY and ENGINEER
2. The Request for Proposal (RFP) and any amendments thereto
3. ENGINEER's bid or proposal
4. Drawings required for the project, if applicable
5. Copies of all required bonds, certificates of insurance and licenses required under this contract.

Each of which is attached hereto. These documents form the entire Agreement between the parties and there are no other agreements between the parties. Any amendment or modification to this Agreement must be in writing and signed by an official with the authority to bind the CITY.

### **2. RELATIONSHIP OF THE PARTIES**

The ENGINEER shall be contracted by the CITY to perform the professional services required for this project. The relationship between the parties shall be limited to the performance of services as set forth in this AGREEMENT and shall not constitute a joint venture nor a partnership nor an employee-employer relationship. Neither party may obligate the other to any expense or liability outside of this AGREEMENT except upon written consent of the other.

Any subconsultant used is the agent of the ENGINEER and not the City of Nashua. Subconsultants required for this project include George E. Sansoucy and Hartman and Associates, Inc.

### **3. SCOPE OF WORK**

This AGREEMENT shall be executed in conformance with the Scope of Services as described in Attachment A and the ENGINEERS Technical Proposal of June 10, 2002. The ENGINEER'S responsibilities shall be engineering services as described in the Scope of Work and to be further defined by the Client. The ENGINEER agrees to provide qualified personnel to participate in the project and all materials, labor and equipment to perform all work shown in the Scope of Work..

### **4. SCHEDULE AND COMPLETION DATE**

Professional Services will be provided in accordance with the project schedule. The completion date for these services shall be within seven (7) months following the Notice to Proceed, unless extended in writing in accordance with the provisions of Item 6 of this AGREEMENT.

### **5. PAYMENT**

The CITY shall pay the ENGINEER on a monthly basis based upon invoices submitted by the ENGINEER. Invoices shall be prepared in conformance with a format acceptable to the CITY. Payments will be made within thirty (30) days in accordance with the City's accounts payable processing schedule.

The execution of this AGREEMENT shall constitute authorization to proceed with all work as described in Attachment A and based on the Fee Schedule provided in Attachment B. The CITY shall make reasonable efforts to ensure payment to the ENGINEER within thirty (30) days.

### **6. CONTRACT EXTENSION/FEE ADJUSTMENT**

The CITY and ENGINEER mutually agree that the work shall be performed in accordance with the requirements and intent of the attached Scope of Services. Fee adjustment will be considered for additional tasks not specifically outlined in the attached Scope of Services. In the event that additional services are required, the ENGINEER will submit an Additional Services Proposal and Agreement to the CITY for authorization. No work will be performed without prior authorization.

If the AGREEMENT duration is extended in excess of one year beyond the time allocated for reasons not related to the ENGINEER performance, the fee will be equitably adjusted.

### **7. TERMINATION OF CONTRACT FOR CAUSE**

If, through any cause, the ENGINEER shall fail to furnish in a timely and proper manner its obligations under this AGREEMENT, or if the ENGINEER shall violate any of the covenants, agreements or stipulations of the AGREEMENT, the CITY, shall thereupon have the right to terminate this AGREEMENT by giving written notice to the ENGINEER of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, plans, data programs and reports prepared by the ENGINEER under this AGREEMENT shall, at the option of the CITY

become its property and the ENGINEER shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

#### **8. TERMINATION FOR THE CONVENIENCE OF THE CITY**

The CITY may terminate the AGREEMENT at any time by giving written notice to the ENGINEER of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.

In that event, all finished or unfinished documents and materials shall, at the option of the City become its property. If the AGREEMENT is terminated by the CITY as provided herein, the ENGINEER will be paid an amount which bears the same ratio to the total compensation as the services covered by the AGREEMENT, less payments of compensation previously made.

#### **9. DISAGREEMENTS AND DISPUTES**

All disagreements and disputes, if any, arising under the terms of this AGREEMENT, either by law, in equity or by arbitration, shall be resolved pursuant to laws and procedures of the State of New Hampshire, in which state this AGREEMENT shall be deemed to have been executed. No action at law or equity or by arbitration shall be commenced to resolve any disagreements or disputes under the terms of this AGREEMENT, in any jurisdiction whatsoever other than the State of New Hampshire and County of Hillsborough.

#### **10. INDEMNIFICATION**

The ENGINEER agrees to protect, defend, indemnify and hold the City of Nashua harmless from and against losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities in connection with or arising out of this agreement and/or the performance hereof. Without limiting the generality of the foregoing, any such claims, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, infringement of any patent, trademark, copyright (or application for any thereof) or of any other personal or property right, or any violation of applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The ENGINEER further agrees to investigate, handle, respond to, provide defense for and defend any such expenses related thereto, even if it (claims, etc.) is groundless or false. In any case, the foregoing provisions concerning indemnification shall not be construed to indemnify the City for damage rising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, or its employees.

#### **11. OWNERSHIP OF RECORDS**

Copies of all data, plans, materials, and documents pursuant to the AGREEMENT shall be the exclusive property of the City of Nashua.

#### **12. INSURANCE**

The ENGINEER shall provide a certificate of insurance demonstrating the following policy limits:

General Liability-\$1,000,00 per occurrence/\$2,000,000 aggregate. City of Nashua must be named an additional insured.

Motor Vehicle Liability-\$1,000,000 combined single limit. Coverage must include all owned, non-owned and hired vehicles. City of Nashua must be named and additional insured Workers' Compensation as required by Statute/Employers' Liability of \$100,000/\$500,000/\$100,000

Certificates of Insurance must be filed with the City of Nashua Risk Management Department within two weeks of receiving notice of contract award and prior to start of contract work. Thirty (30) days notice of cancellation or material change in coverage is required. It is the responsibility of the contractor to file updated Certificates of Insurance with the City of Nashua for renewals/changes taking place during the life of the contract.

All subconsultants are subject to the same insurance requirements as the ENGINEER.

### 13. AGREEMENT

The AGREEMENT between the CITY and the ENGINEER shall consist of (1) the Request for Proposals (RFP) and any amendments thereto, (2) the ENGINEER'S proposal in response to the RFP, and (3) this Agreement for Professional Services. In the event of a conflict in language between the documents, referenced above, the provisions and requirements set forth and referenced in the Scope of Services (3) shall govern. However, the CITY reserves the right to clarify any contractual relationship in writing with the concurrence of the ENGINEER, and such written clarification shall govern in case of conflict with the applicable requirements contained in the RFP and the ENGINEER'S proposal. In all other matters, not affected by written clarification, if any, the Scope of Services (3) shall govern.

### 14. FEES AND EXPENSES

The CITY agrees to pay and the ENGINEER agrees to accept a not-to-exceed fee in the amount of \$99,600 for the scope of services described in Attachment A. ENGINEER shall be compensated for project costs, including labor and expenses based on the Fee Schedule provided in Attachment B and based on the breakdown presented below.

	<u>Budget</u>	<u>Task Manager/Tech Support</u>
Task 1 – Assets and Liabilities	\$41,800	Sansoucy/Hartman
Task 2 – Water Capacity	\$14,000	Rizzo
Task 3 – Watershed Management	\$6,000	Rizzo
Task 4 – Philadelphia Suburban and Pennichuck Corporation	\$3,000	Sansoucy/Hartman
Task 5 – Regulatory and Legal Review	\$16,800	Sansoucy/Hartman
Task 6 – Opportunities and Recommendations	\$18,000	All
<b>Total</b>	<b>\$99,600</b>	

Expenditures in excess of this amount without prior written authorization from the CITY will not be compensated. The city shall reimburse expenses incurred by the engineer based on actual costs with no markup. Additional services agreed upon by the city and the engineer will be

billed at the current direct labor rates with the contract overhead and fee rates. Lodging, meal and per diem costs will not be reimbursable unless approved in advance by the City.

#### **15. SUBCONSULTANTS**

All subconsultants to the ENGINEER shall be bound by the same terms and conditions of the Agreement.

#### **16. NOTICE CLAUSE**

All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, to the following addresses or to such other addresses as the parties shall, by like notice, notify one another.

- (a) If to CITY                      City of Nashua  
   Division of Public Works  
   165 Ledge Street  
   Nashua, NH 03061-20190  
   Attn: George Crombie, Director of Public Works
  
- (b) If to ENGINEER:              Rizzo Associates, Inc.  
   1 Grant Street  
   Framingham, MA 01701-9005  
   Attn: Charles Button, P.E.

#### **17. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement of the CITY and the ENGINEER with regard to the ENGINEER completing the Comprehensive Review of the Pennichuck Corporation Water System in the City of Nashua.

**IN WITNESS WHEREOF** the parties hereto have executed copies of this Amendment the day and year first above written. If a Corporation, attach to each signed copy of this Contract an attested copy of the vote of the Corporation on authorizing the said signing and sealing.

The parties have read the foregoing, understand completely the terms and conditions, and willingly enter into this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2002.

**ENGINEER:** \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

Corporate Seal:

This is to certify that the funds have been appropriated by the City of Nashua for the purposes set forth in Agreement herein.

This is to certify that this procurement was made on behalf of the City of Nashua in accordance with the requirements of New Hampshire General Laws.

\_\_\_\_\_  
Client Accountant  
Dated:

\_\_\_\_\_  
Procurement Officer  
Dated:

Approved As To Form

\_\_\_\_\_  
Client Counsel

Dated \_\_\_\_\_

8970 Contract\_071002.doc

**Attachment A**  
**Scope of Work**



## **Attachment A - Scope of Work**

### **Comprehensive Review Pennichuck Water System Nashua, New Hampshire**

#### **Task 1      Assets and Liabilities**

The Pennichuck Corporation will be examined from the perspective of the flow of funds required to operate the corporation's utilities and the consequent impacts on its assets and liabilities. The results of this examination will provide a baseline model for comparison with alternatives identified during the course of the review.

This task will also provide an understanding of the financial and regulatory setting in which Pennichuck's and Philadelphia Suburban's utilities operate. The financial and regulatory operation of investor owned utilities will be contrasted with those of governmentally owned utilities.

#### **Task 2      Water Capacity**

The Pennichuck water system provides water to Nashua through a series of four impoundments (Holt Pond, Bowers Pond, Harris Pond, and Supply Pond), the Infilco Degremont Treatment Plant and a series of storage tanks and distribution mains. The system also has access to Merrimack River water. Rizzo Associates will review the available information on the water system with the intent of developing a capital improvement plan that will satisfy Nashua's needs over the next 20 to 50 years.

- A.      Future Demand** - The future water demands will be estimated based on growth projections from the planning department of the City of Nashua, the regional planning agency, and neighboring towns of Hollis, Merrimack, Milford and Amherst. These projections will be used to test the sensitivity of the system for future conditions. Also, an evaluation will be made relative to water conservation and leak detection within the system.
- B.      Safe Yield** - Currently it is reported that the safe yield of the four impoundments is 7 mgd and Pennichuck has a permit to withdraw 30 mgd from the Merrimack River. The calculation by Pennichuck of the safe yield and the Merrimack River water withdrawal permit conditions will be reviewed.
- C.      Need for Future Supply** – A comparison will be made between estimates of future demand and safe yield to assess the potential need for expanded water sources. We anticipate a greater reliance on the Merrimack River for increased water demand in the future.

- D. Treatment System** – We will evaluate the ability of the treatment plant to process the necessary flow and meet the NHDES drinking water standards. Included in this review will be the need to meet the Interim Enhanced Surface Water Treatment Rule for turbidity of 0.3 NTU. Rizzo Associates will research anticipated changes in water quality regulations and assess the ability of the treatment facility to meet these new regulations. We will also assess the ability of the treatment facility to meet the future daily demands based on the results of the future demand evaluation.
- E. Distribution System** - Rizzo Associates will estimate future needs for the distribution system that includes several hundred miles of water mains, pumps and seven storage tanks. Recommendations relative to capital upgrades and improvements will be made along with their costs and schedule for implementation.
- F. Capital Improvement Plan** – The cost information and schedules developed for water supply, treatment, and distribution will be summarized in tabular format and used as input to the financial analysis.

### **Task 3 Watershed Management**

Watershed management is in many ways the most cost-effective means of protecting the assets of a water utility. The Pennichuck Water Works Watershed Management Plan was developed in 1998 and focuses on 10 top problems and recommended actions related to the problems. This document will be used as the basis for the Model Plan Comparison described below.

The Pennichuck Watershed Management Plan will be compared and contrasted with four other model watershed plans including those developed by Rizzo Associates for the MWRA. The evaluation will compare the various aspects of a watershed plan including:

- Stormwater Management
- Pond Eutrophication
- Buffer Zones
- Transportation Impacts
- Agricultural Impacts
- Pollution Sources
- Recreational Activities
- Individual Septic Systems
- Public Education
- Watershed Protection
- Land Acquisition
- Regulatory Authority

We will also compare the Pennichuck Watershed Management Plan to the Water Resources Planning and Effective Watershed Management for Surface Water Supplies manuals. The latter manual includes over 20 case studies that will be helpful in the analysis and will be compared to the Pennichuck Plan. Based on these comparisons, recommendations will be made to improve the watershed management plan. Costs to implement changes and/or additions to the plan will also be developed.

#### **Task 4      Philadelphia Suburban and Pennichuck Corporation**

The Philadelphia Suburban Corporation will be studied to show the structure of a large publicly owned water utility holding company and their motivations for acquisitions. The track record of Philadelphia's stewardship of utilities acquired will be examined and the consequences of the proposed merger to ratepayers will be evaluated.

#### **Task 5      Regulatory and Legal Review**

The regulatory and legal requirements for completion of the merger between Pennichuck and Philadelphia will be outlined and discussed with options for participation by the City identified. Critical decision points will be verbally identified to the City and documented in the written report.

Sansoucy will coordinate the submission of data requests to Pennichuck and Philadelphia during the N.H. Public Utility Commission's Docket No. DW 02-126. Sansoucy will participate in the initial prehearing by the Commission on the docket and in the technical session on initial data request responses scheduled for October 10, 2002.

#### **Task 6      Opportunities and Recommendations**

Once sufficient work on Tasks 1 -5 is completed, approaches will be developed for both the Pennichuck/Philadelphia Suburban merger and for a long-term ownership and operation strategy under a not-for-profit/governmental entity. The approaches will be integrated and discussed with the City of Nashua in order to finalize the recommendations. This work will include an evaluation of the market and review of comparable sales.

The project team will review up to four models for providing not-for-profit/governmental utility ownership and compare these models to Pennichuck/Philadelphia Suburban.

Sansoucy will work with Rizzo in identifying and quantifying the options available to the City with respect to the merger and other choices it can make with respect to its water supply.